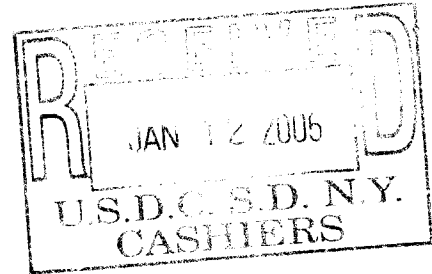


06 CV 00273

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New York, New York 10177
212-351-4500
Attorneys for Defendant
Aetna Life Insurance Company



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
PAUL E. SMITH,

Plaintiff,

Civ. _____

– against –

NOTICE OF REMOVAL

AETNA U.S. HEALTHCARE,

Defendant.
----- x

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK:

Defendant Aetna Life Insurance Company (“Aetna”) (named incorrectly by plaintiff as Aetna U.S. Healthcare) respectfully seeks to remove this action from the Civil Court of the City of New York, County of New York, Small Claims Part, to the United States District Court for the Southern District of New York. As reasons therefor, Aetna states as follows:

THE CIVIL COURT ACTION

1. Plaintiff Paul E. Smith purported to institute an action against Aetna in the Civil Court of the City of New York, County of New York, Small Claims Part (the “Civil Court Action”), entitled Paul E. Smith v. Aetna U.S. Healthcare, SCNY 5592/05-2, by preparing a Statement of Claim and having a Notice of Claim and Summons to Appear served upon Aetna’s

New York office, located at 99 Park Avenue, New York, New York 10016. A copy of the Statement of Claim and Notice of Claim and Summons to Appear is attached as Exhibit A.

2. According to the Notice of Claim and Summons to Appear, plaintiff's address is 132 East 45th Street, Apartment 8D, New York, New York 10017.

3. As set forth more fully below, plaintiff's Claim and Summons to Appear seeks recovery of the sum of \$4,950 plus interest to recover moneys arising out of non-payment of a medical insurance claim.

4. The Civil Court Action is removable from the Civil Court to this Court pursuant to 28 U.S.C. § 1441(a), because the complaint raises claims under the laws of the United States over which this Court has original jurisdiction under 28 U.S.C. §1331.

BASIS FOR REMOVAL

5. Plaintiff, a former employee of ICI Americas, Inc. ("ICI"), received health insurance from ICI by virtue of his employment with ICI. His wife, Sharon Smith, was also insured under ICI's health benefits plan, as a dependant of plaintiff.

6. ICI offered its employees, including plaintiff, the opportunity to participate in its self-funded health benefits plan. A self-funded benefits plan uses its own funds to pay for medical services rendered to its members.

7. Often a self-funded insurance plan retains the services of an administrator to process and adjudicate claims submitted under its health benefits plan. Effective January 1, 1996, ICI contracted with Aetna to provide such administrative services in connection with ICI's health benefits plan. Aetna did not provide medical insurance to ICI, or its members, including Paul Smith and his wife, Sharon Smith.

8. The plan of health benefits provided by ICI to its employees, including plaintiff, and administered by Aetna, constitutes an employee welfare benefit plan within the meaning of the Employee Retirement Income Security Act (“ERISA”) 29 U.S.C. §§ 1001, et seq.

9. Plaintiff’s complaint against Aetna alleges that Aetna failed to pay an insurance claim, and seeks reimbursement in the amount of \$4,950.

10. Because plaintiff’s claim against Aetna relates to an employee benefit plan within the meaning of ERISA, Aetna may remove the Civil Court Action to this Court pursuant to 28 U.S.C. § 1441(a).

11. ERISA provides an exclusive federal enforcement scheme for claims by plan beneficiaries and preempts state tort and contract actions. 29 U.S.C. §§ 1132 and 1144.

12. This notice has been filed within the time provided by 28 U.S.C. § 1446(b) and the Federal Rules of Civil Procedure. Aetna received the Notice of Claim and Summons to Appear, dated December 14, 2005, on or about December 27, 2005.

13. Upon the filing of this notice, Aetna will give written notice to plaintiff of the removal, and will file a copy of this notice with the Clerk of the Court, New York City Civil Court, County of New York, Small Claims Part.

WHEREFORE, Aetna Life Insurance Company respectfully requests that the Civil Court Action now pending in the Civil Court of the City of New York, County of New York, Small Claims Part, be removed to this Court.

New York, New York
January 11, 2006

EPSTEIN BECKER & GREEN, P.C.

By: 

Kenneth J. Kelly (KK-4195)
Jennifer M. Moak (JM-3173)

250 Park Avenue
New York, New York 10177-0077
(212) 351-4500
Attorneys for Defendant
Aetna Life Insurance Company

RECYCLED

CIVIL COURT OF THE CITY OF NEW YORK
SMALL CLAIMS PART
 111 CENTRE STREET - RM. 325
 NEW YORK, NY 10013-4389

Notice addressed to: **PAUL SMITH**
 132 E. 45TH ST. APT 8D
 NEW YORK CITY, NY 10017

7176 8516 8010 2504 1721

NOTICE OF CLAIM

The Claimant asks Judgment in this court for together with interest and disbursements, on the following claim:

PAUL SMITH
 132 E. 45TH ST. APT 8D
 NEW YORK CITY, NY 10017

CIV-SC-55 Face 11004

NOTICE OF CLAIM AND SUMMONS TO APPEAR

This is the Court to be held on 1.9.2006 at 6:10 PM. If you wish, you may retain the services of an attorney to represent you at your own expense. IF YOU FAIL TO APPEAR, JUDGMENT WILL BE ENTERED AGAINST YOU BY DEFAULT. EVEN THOUGH YOU MAY HAVE A VALID DEFENSE, ONLY THE JUDGE PRESIDING AT THE HEARING CAN GRANT AN APPOINTMENT. The Clerk cannot grant any change in the scheduled date or time.

YOU MUST BRING THIS NOTICE WITH YOU EACH TIME YOU APPEAR IN COURT IN THIS CASE.

SUMMONS TO APPEAR This claim is scheduled for a Hearing to be held in the Courtroom:
 111 Centre Street (Room 353)
 New York, New York 10013
 On Thursday, January 19, 2006 at 6:10 PM

CLAIMANT
 PAUL SMITH
 132 E. 45TH ST. APT 8D
 NEW YORK CITY, NY 10017

DEFENDANT
 AETNA US HEALTH CARE
 97 PARK AVE
 NEW YORK CITY, NY 10016

CHIEF CLERK
 JACK BAER

DATED December 14, 2005

CASE TYPE SMALL CLAIM
SMALL CLAIM

INDEX NUMBER
 SCNY
 5592/05-2
 1/19

A Guide to Small Claims Court is available at the court listed above

ESTA INFORMACIÓN ESTÁ DISPONIBLE EN ESPAÑOL EN LA CORTE

CT2005 009027

Reale

#5592/05-2

New Benefit Case

Small Claims NY City

It is Paul Smith

Hearing on 1/19/06

(FOR OFFICE USE ONLY)

(Your)

LAST NAME	SMITH		MIDDLE INITIAL	E
FIRST NAME	DAVE			
ADDRESS (NO PO BOX)	132 E 46TH ST	APT 8D		
CITY (Borough/Town/Village)	MANHATTON	STATE	NY	ZIP 10017
OTHER INFO				

Doing Business As | In care Of |
Attention To | (Circle One)

PHONE NUMBER: ()

III. DEFENDANT'S INFORMATION*

(Their)

LAST NAME OR FULL NAME OF BUSINESS	AETNA US HEALTH CARE			MIDDLE INITIAL	
FIRST NAME					
ADDRESS (NO PO BOX)	99 PARK AVE				
CITY (Borough/Town/Village)	MANHATTON		STATE	NY	ZIP
OTHER INFO	10016				

Doing Business As | In care Of |
Attention To | (Circle One)

PHONE NUMBER: ()

III. CLAIM

III. CLAIM
Amount Claimed: \$ 4950 (Maximum \$5,000)

Date of Occurrence or Transaction:

PRIMARY REASON FOR CLAIM (Check One):

Place of occurrence, IF Auto Accident:

Damage caused to: ☐ automobile ☐ other personal property

Failure to provide: ☐ proper repairs ☐ proper services

Failure to return: ☐ security ☐ property

Failure to pay: ☐ salary ☐ for services rendered ☐ insurance claim

☐ rent ☐ commissions ☐ for goods sold and delivered

Breach of: ☐ contract ☐ lease ☐ warranty

Loss of : ☐ luggage ☐ property

Returned: ☐ check (bounced) ☐ check (stopped)

☐ real property ☐ agreement ☐ use of property

☐ proper merchandise ☐ goods paid for

☐ deposit ☐ money loaned

OTHER REASON: Be brief. Also, if needed, place IDENTIFYING NUMBER(S) here: Receipt #, Claim #, Account #, Policy #, Ticket #, License #, Plate #'s):

DEC 14 2005

Today's Date _____

Signature of Claimant or Agent

DEFENDANT'S NAME: The legal name will be required in order to obtain an enforceable judgment. If the Defendant is a **business**, its full and correct **business name** should be obtained from the Office of the County Clerk in the county in which the **business** is located or check on the following website: www.don.state.ny.us DEFENDANT'S ADDRESS: You must indicate the proper **street address** of the Defendant. A Post Office Box is not acceptable.

NOTE: If the Claim is a result of an automobile accident, the Claim must be **OWNER** against **OWNER**.

CIV SC-50 (revised 9/01)